

(2014) 04 GUJ CK 0101
In the Gujarat High Court
Case No : Criminal Appeal No. 657 of 2009

Subhashbhai Janubhai Bhoys

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 342
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 04 GUJ CK 0101

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : G.R. Vijayalakshmi, Advocate for the Appellant; K.P. Raval, Addl. Public Prosecutor, Advocate for the Respondent

Judgement

Bhaskar Bhattacharya, C.J.—This appeal is at the instance of a convict for the offence punishable u/s 302 of the Indian Penal Code and section 135 of the Bombay Police Act and is directed against the order dated 17th September 2008 passed by the learned Additional Sessions Judge, Second Fast Track Court, Navsari, sitting at Vansada, Ahwa in Sessions Case No. 34 of 2008 thereby holding the appellant guilty of murder and passing a sentence of life imprisonment upon the appellant for the offence punishable u/s 302 of the Indian Penal Code and a fine of Rs. 5000/-, with a stipulation that in default of payment of fine, the appellant would undergo a further imprisonment for one year.

2. The translated version of the charges framed against the appellant-accused is quoted below:

On 14/3/2008, you, the accused person, demanded money from the deceased, Shantiben, at around 6:00 hours in the evening at village Kotabav, and as the money was not given, you kept animosity and you, the accused, on 15/3/2008 at 5:00 o'clock at village Kotaba, with the intention to cause the death of

Shantiben, the mother of the complainant, at the home of complainant, gave axe blows on the face and on the part from throat to chest, and caused her death and committed the offence punishable u/s 302 of I.P.C.

2. You, the accused, have committed the offence punishable u/s 135 of B.P. Act, violating the notification of the District Magistrate not to keep the arms and holding the deadly weapons at the aforesaid place and time in the public.

As you committed the aforesaid offense in the jurisdiction of this court, I hereby direct that the trial of the said offence be conducted against you, the accused in this court.

3. The accused denied the charges framed against him and claimed to be tried.

4. During the trial, the prosecution produced the following witnesses in support of the prosecution case:

5. The following pieces of documentary evidence were also laid at the time of trial by the prosecution:-

6. The statements of the accused were recorded u/s 313 of the Code of Criminal Procedure wherein he had stated that a false offence had been registered against him and a false charge sheet had been filed. He has not committed any offence and the complaint has been lodged by keeping old animosity with him, and he was innocent. However, the accused did not lead any evidence in support of his defence.

7. As indicated earlier, the learned Sessions Judge, by the order impugned herein, found the appellant guilty of murder and consequently, passed the sentence as stated earlier.

8. Being dissatisfied, the convict has come up with the present appeal.

9. Ms. Vijayalakshmi, the learned advocate appearing on behalf of the appellant, strenuously contended before us that the learned Sessions Judge committed substantial error of law in holding the appellant guilty of murder notwithstanding the fact that there was no eyewitness of the incident, and, at the same time, the circumstantial evidence sought to be placed by the prosecution is devoid of any substance. Ms. Vijayalakshmi contends that it would appear that the evidence adduced by the complainant and the evidence of the other two witnesses, viz. PW. No. 3 and PW. No. 4, are conflicting, and, therefore, the learned Sessions Judge should not have relied upon such circumstantial evidence. Ms. Vijayalakshmi further contends that in this case, the recovery of clothes and weapon were not proved, and, at the same time, even those items allegedly recovered did not contain any blood. Ms. Vijayalakshmi, therefore, prays for setting aside the order of conviction and sentence.

10. Mr. Raval, the learned Additional Government Pleader appearing on behalf of the prosecution, has, on the other hand, supported the order passed by the learned Sessions Judge and has contended that there is no just reason for

disbelieving the evidence of PW. No. 3 and PW. No. 4, who are the neighbours. Mr. Raval further contends that the appellant was previously charged with murder of his wife, who was the daughter of the victim in the present case, and it has been well proved from the evidence on record that on the previous night of the incident, there was altercation between the deceased and the appellant for recovery of money. Mr. Raval further contends that the fact that the appellant was absconding for about 3 months after the incident though he happens to be the son-in-law of the deceased and was a resident of the same locality, was also a relevant factor which indicated that the appellant was guilty. Mr. Raval, therefore, prays for dismissal of the appeal.

11. In the case before us, there is no dispute that the appellant was the son-in-law of the deceased and there was unnatural death of the wife of the appellant. It further appears that the appellant was prosecuted for murder of his wife but he was acquitted of the offence in that case. In the case before us, the son of the deceased, viz. Rameshbhai, lodged a complaint before the police on 15th March 2008 stating that on 14th March 2008, when the complainant returned to his home at around 7 O'clock to have food, his mother, the deceased, stated that the appellant came to the house of the victim and demanded money, and as she refused to pay the same, he abused her and threatened her that he would come back at night and kill her. According to the complaint, in view of such threat, the complainant did not go back to his brother-in-law's house at night but he went to the house of his uncle and slept there as the said uncle resided beside his house. The further prosecution case is that PW No. 3, the next door neighbour, had heard in the previous afternoon, the altercation among Ramesh, the deceased and the accused and the same fact has been repeated by the PW. No. 4, who is the wife PW. No. 3. The PW. 4 further stated that in the morning of the next day, she saw the accused going with an axe in his hand from the house of the deceased.

12. The learned Sessions Judge, on the basis of the aforesaid evidence, came to the conclusion that the quarrel in the previous evening was the cause of murder and in this case, such fact has been corroborated by the evidence of the complainant, the PW. No. 3 and his wife, the PW. No. 4.

13. Therefore, in order to appreciate the question involved in this appeal, it will be profitable to consider in detail the complaint lodged by the complainant as well as the oral evidence given by the complainant as PW No. 2, and also the depositions of PW. No. 3 and 4, which are mentioned below from the translated version of the complaint and the deposition available in the records.

14. The complaint filed by Rameshbhai Lachubhai Bhoje on 15th March 2008 is to the effect that he is a resident of Kotaba (Barda Faliu) Taluka: Ahwa, Dist. Dang. He went to Dolwan Khandsari with his wife and along with other laborers of their village for labour work and at that place, as he bought two he-buffaloes for agriculture work, a day prior to the lodging of the complaint, he and the brother-in-law of his uncle, Parbhubhai Janubhai, along with Ramesh Mahud

came back to his village Kotaba and since then he was at his home.

14.1 A day prior to the lodging of the complaint, i.e. on 14th March 2008, he and his brother-in-law, Subhashbhai Janubhai, went to the house of his parents-in-law at village Dhulita as there was no one at his home to take care of two he-buffaloes purchased by him and reached the house of his father-in-law, Navsubhai Lukabhai, at around 3:00 o'clock and kept those buffaloes at the home of his father-in-law and they both returned to village Kotaba at around four to four-thirty hours in evening. Thereafter, he went to his house and his brother-in-law went to his own house. In the evening at about 6 O'clock, he went to sit with the boys in the Falia and came to his house to have food at around 7 o'clock. At that time, his mother, Shantiben, told him that his brother-in-law, viz. Subhashbhai Janubhai, came to the house and demanded money and she refused. Therefore, he abused her and threatened her that he would come at night and kill. As she said so, he did not go to house of his brother-in-law at night but went to house of his uncle who stayed nearby and slept there.

14.2 On the date of the incident, i.e. 15th March 2008, at around 6 O'clock in the morning, Sakiyabhai Ramabhai Pawar and Shankar Maahdu Gangorg and his uncle Ulubhai came to house and stated that the dead-body of his mother Shantiben was lying in the veranda in a bleeding condition and wounds were seen on the part of face and chest. It was also told that Subhashbhai Janubhai Bhoje had gone running towards the road along with axe. On receiving such information, he and his uncle, Ulubhai Dhanjubhai, went to his house and found that his mother, Shantiben, was lying supine in the veranda of home in a bleeding condition and saw wounds on the face and from throat to chest. Therefore, a search was made for his brother-in-law, Subhashbhai Janubhai Bhoje, at his house and in the surrounding forest but as he was not found, Bhartbhai Bhikubhai, the vice president of Taluka Panchayat of Village, was informed about the incident and he had come to lodge the complaint along with Police Patel-Rajubhai Badiyabhai, and Mohanbhai Ukhadiyabhai Gavit, a leading person of village.

14.3 Therefore, his brother-in-law, Subhashbhai Janubhai Bhoje, resident of Kotaba (Barda Falia), demanded money from his mother, Shantiben, on the previous day at around 6 o'clock in the evening and as she refused to pay, he abused her and threatened her that he would come at night and kill her. On the day of lodging complaint in the morning, he caused the death of his mother, Shantiben, by giving blows of axe on the part of face and from throat to chest and thereafter, he ran away, and, therefore, he had filed the complaint for taking legal action against him.

15. The complainant, Rameshbhai Lachubhai Bhoje, himself is PW. No. 2 and in his examination-in-chief, he has stated that he knew accused person as the accused is his Brother-in-law (Sister's husband). His sister's name was Suman and when this witness was young, the marriage of Suman was solemnized with the accused. Some dispute arose with Suman but did not know as to what

dispute had arisen. The accused was tried for the murder of Suman but he was acquitted of the offence. Suman had three boys born from the accused and the boys stayed at another place where the cows are grazed.

15.1 According to this witness, the accused was living in his house at village Kotaba after the death of Suman. The house of accused was away at a distance of hundred meters from the house of this witness. This witness was living together with his mother, and the accused was living separately and they did not have normal relation with the accused.

15.2 According to this witness, on the previous day of the incident, the accused quarreled with him and his mother and the accused stated that he would kill the accused or his mother. The accused alleged that they had stolen his money. Thereafter, this witness went to his uncle's house and the accused went to his house and his mother was at their house. He went to his uncle's house at 7 o'clock and spent night at his uncle's house because he was afraid of the accused. Thereafter, Sakyabhai came to his uncle's house to call him at around 7:00 o'clock in the next morning and the said Sakyabhai told that the accused had killed his mother and he had run away after killing. Thereafter, he and his uncle went to see his mother and upon looking at her after reaching there, he found that there were wounds of axe on the body of his mother and the dead-body of his mother was lying in the veranda outside. Thereafter, he went to the village and to the police station to lodge the complaint and filed his complaint. He has proved the complaint and identified his signature thereon.

15.4 This witness has stated that the accused was not seen in the village and he ran away. After almost ten days, the accused came to his house and threatened and went away. Therefore, he lodged second complaint. The accused threatened him, his uncle and his elder brother. He told that he was going to kill the three of them and therefore, he lodged another complaint against the accused.

15.5 In the cross examination by the learned advocate for the accused, this witness has admitted that he was at the house of his uncle when the incident occurred. He has further admitted that he did not eyewitness the incident. He has further admitted that as Sakyabhai came and told, he came to know about the incident. He has further admitted that the house in which he and his mother were residing was made of chip of bamboo. This witness has denied that his mother had consumed liquor on the previous night. He has admitted that when he went to the police station at Ahwa, Bharatbhai Bhoye, the vice president of Taluka Panchayat, was along with him. He has denied that the complaint was dictated by Bharatbhai Bhoye. He has also denied that the complaint was lodged as stated by Bharatbhai.

15.6 This witness has denied that he had not dictated in his complaint that on the previous day of the death of his mother, the accused quarreled with him and his mother and that the accused told that he would kill him or his mother. This witness has also denied that he had not dictated in his complaint that the

accused was telling that he has stolen the money He has also denied that he had not dictated in his complaint that he went to house of his uncle and stayed at his uncle's house at night because he was afraid of the accused. He has also denied that he had not dictated such in his complaint that Sakyabhai told that the accused had killed his mother. This witness has also denied that his mother had fallen on the cut bamboo in a drunken condition and therefore, she died. He has also denied that he was giving false deposition against the accused as there was animosity with the accused.

16. PW. No. 3, Sakyabhai Ramabhai Pawar, in his examination-in-chief, has stated that the incident took place on 15th March 2008. He knew the accused, viz., Subhashbhai Janubhai and the deceased Shantiben, who was the mother-in-law of the accused, Subhash Janu. The deceased Shantiben was living with her son, Ramesh. The accused, Subhashbhai, and the deceased, Shantiben, were residing in the same village and his house is about at a distance of 15 to 20 feet from the house of the deceased Shantiben.

16.1 This witness has further stated that on the previous day of this incident, there was a quarrel involving the accused-Subhashbhai, Ramesh and Shantiben. Thereafter, Subhash came to the house of his mother-in-law and threatened her and Ramesh that he would kill her that night. Thereafter, Subhash left for his house at about 6 o'clock in the evening. Thereafter, after six o'clock, they went to church for prayer. Thereafter, after coming from the church, they slept at night. Thereafter, they got up before four o'clock at night for milking. At that time, the accused was seen with an axe escaping from the house of Shantiben. Thereafter, after milking, when he made inquiry after sometime, the dead-body of Shantiben was lying in the courtyard. Therefore, he informed her family members and surrounding people. About four wounds were made on the dead-body of Shantiben and it was in a bleeding condition. He talked to the son of Shantiben, Rameshbhai, and Ulubhai. The police recorded his statement in respect of this incident.

16.2 This witness has further stated that the accused was married to Suman, the daughter of Shantaben. Prior to this incident, the case was filed against the accused for murder of his wife. He did not know as to what happened in that case. The accused is a person having strange mind and he would attack any person whom he saw. He knows about the accused as he was residing near to his house.

16.3 In the cross-examination, this witness has stated that he had studied up to seven standard. Generally, the people of their area depend upon forest and agriculture. He has admitted that the incident took place when summer was in full swing. He has denied that at such time, people leave from the house early in the morning for work. This witness stated that generally, he left for work at eight o'clock. He has admitted that axe and sickle are the tools of their daily use. He has also admitted that axe is kept in all houses. This witness has stated that if anything happens in Shantiben's house, it can be heard in their house. The

houses of her relatives were situated around the house of Shantiben. He did not know as to whether Shantiben and Ramesh used to consume liquor or not. A quarrel had taken place among the three, viz. Shantiben, the accused and Rameshbhai. The leaders of the village were not informed about the threat given by the accused on the previous day. He has admitted that there is darkness at 4.00 o'clock in the morning. He has denied that one cannot identify anyone in the darkness of night. He has admitted that he did not eyewitness the incident. He has admitted that no sound was heard at night. He has also denied that the complainant of this case is his relative. He has denied that there were bamboo woods having sharp edge, in the compound of Shantiben and injury was sustained on account of falling on them. He informed the complainant about the incident. He did not know as to how Sumanben died. He did not become a witness in that case. This witness has denied that the accused used to go in early morning to bring woods and he mentioned the name of the accused falsely due to animosity. He has denied that P.S.I. tutored him as to what deposition he should give on the date of giving deposition. Subhashbhai was living separately from the deceased Shantiben and the complainant Rameshbhai. The police recorded his statement on the place on the day of the incident. He has denied that he was stating falsely that he saw the deceased Subhashbhai going with axe. He has also denied that he was stating falsely that a quarrel had taken place between the accused and the other on the previous day and the accused gave threat. He has denied that he was giving false deposition at the instance of villagers.

17. PW. No. 4 is Jamanaben Sakyabhai Pawar, who is wife of PW. No. 3. In her examination-in-chief she has stated that Sakyabhai Ramabhai is her husband. The deceased Shantiben Lachhubhai and his son Ramesh are residing in front of their house. The accused Subhashbhai is the son-in-law (daughter's husband) of the deceased Shantiben. The name of wife of the accused was Suman. Prior to this incident, the case against the accused for the murder of his wife was conducted. She did not know as to what happened in that case.

17.1 This witness has further stated that before six months from the date of giving deposition, the accused, Subhash, had a quarrel with Ramesh and his mother at about five o'clock in the evening. The accused Subhash told that he would kill both of them if they did not return his money, he would will kill both of them. Thereafter, she was at her home in the evening. She and her husband slept in their house at night and got up at four o'clock in the morning for milking. Thereafter, after getting up in the morning, when they saw, the accused Subhash was escaping from near the dead-body with an axe. Shantiben was lying nearby in the courtyard of the house. She was afraid but her husband went near the dead-body. She also went near the dead body, but she was afraid, she went away to her house and her husband informed to all. When she saw the dead-body, it was lying down and it was in a bleeding condition. As the accused was residing near their house, she knew him. The police recorded her statement with regard to the incident.

17.2 In the cross-examination, this witness has stated that she was illiterate. She has admitted that the people of their village mostly depend upon forest. She has admitted that the incident took place when summer was in full swing. She has further admitted that since it is much sunshine in the summer, people leave from homes early in the morning for collecting woods. She has also admitted that axe and sickle are the tools of their daily use and they are found in all houses. She has admitted that people go for cutting woods in the morning with axe. She has admitted that if anything happens at the house of Shantiben, it could be heard at their home. She has admitted that Ramesh and Shantiben used to consume liquor. She has denied that she was not present at the time of the quarrel in the evening about which she stated. They went to church at six o'clock in the evening and after coming back at night, they slept. No sound was heard at night time and it was not known as to what happened. She did not know as to how the murder of Shantiben was committed. She has admitted that there was darkness at four o'clock in the morning. She has admitted that it is difficult to identify a person in the darkness. She has admitted that she had good relation with Shantiben. She has denied that Shantiben sustained injury on account of falling on sharp iron sheet and bamboo. She has denied that she was stating falsely that she saw that any quarrel might have taken place between the accused and the deceased. She has denied that she was falsely stating that she saw the accused going with axe in the morning. She has denied that she did not know as to what the police wrote in police statement. She has denied that the police did not read over her statement. She has denied that she was giving false deposition at the instance of people of village and her husband. She has admitted that P.S.I. tutored her on the date of giving deposition before an hour as to how to speak. She has denied that she was giving deposition in the same way as P.S.I. told her. She has denied that she was giving this false deposition due to old animosity with the accused.

18. From the complaint, Exh. 9, lodged by the PW. No. 1, it appears that it is clearly stated that on 14th March 2008 in the evening he went to his house at about 7 O'clock in the evening to have food. At that time, his mother, the deceased, told him that the accused came and demanded money and as she refused to make such payment, he abused her and threatened her that he would come at night and would kill her. As a result, the complainant did not go the house of the accused, his brother-in-law, but went to the house of his uncle who was residing nearby to the house of the complainant. On the date of the incident, at 6 O'clock in the morning, Sakyabhai Ramabhai Pawar and Shankar Maahdu Gangorg and his uncle Ulubhai came to house and stated that the dead-body of his mother Shantiben was lying in the veranda in a bleeding condition and wounds are seen on the part of face and chest. It was further stated that the accused, Subhashbhai Janubhai Bhoje, had gone away running towards the road along with an axe. On receiving such information, he and his uncle, Ulubhai Dhanjubhai, went to his house and found that his mother, Shantiben, was lying in the veranda of house in a bleeding condition. Ultimately the complaint was

lodged. He had repeated that in the previous night, the accused demanded money from his mother which she refused to pay, as a result, the accused abused her and threatened her that he would come again at night and would kill her.

19. However, in his oral deposition as PW. No. 2, he has improved the said version by saying that on the previous day of the incident, the accused quarreled with him and his mother and told that he would kill the complainant or his mother alleging that they have stolen his money. We have earlier pointed out that in the complaint, he stated that he heard from his mother that the accused came to the house and his mother told the aforesaid facts to him.

20. PW. No. 3, the next door neighbour, who has his house at a distance of 15 to 20 ft. from the house of the deceased stated that on the previous night, a quarrel was going among the accused, Ramesh and the deceased. The accused came to the house of the deceased and threatened that he would kill her that night. Thereafter, Subhash left for his house at about 6 o'clock in the evening.

21. We have already pointed out that according to the complainant, he came after 7 O'clock to his house to have food and from his mother the complainant came to know that the accused threatened her at about 6 O'clock. Therefore, the PW. No. 3 had no occasion to hear the altercation among three persons when it was the case of the complainant himself that he came to the house at 7 O'clock and at that point of time, the appellant was not there.

22. PW. No. 4 is wife of PW. No. 3, and she has almost repeated the same story and has stated there was a quarrel among the accused, Subhash, Ramesh and his mother before 6 o'clock in the evening and the accused threatened that he would kill both of them if they did not return his money. Thereafter they went to the church at 6 o'clock. Her version is, thus, in conflict with the case made out in the complaint.

23. We are conscious of the position of law that conviction for a murder can be given on the basis of circumstantial evidence provided the chain of circumstances leading to the guilt of the accused is complete. It is also well-settled law that if each of the circumstances proved on behalf of the prosecution is accepted by the court for the purpose of holding that it was the accused who definitely committed the crime, in such a situation, even in the absence of proof of motive of such crime, an accused can be convicted. In the case before us, we find that in the complaint, a particular version has been given which has been improved by the complainant himself as PW. No. 2 and the said improved version is repeated in the deposition of PW. No. 3 and 4, and those are totally in conflict with the complainant's case.

24. Similarly, the statement of the PW. No. 4 that in the morning she saw the accused with an axe in his hand cannot be said to be that of a solely reliable witness for the reason that in cross-examination, she has admitted that she went to church at 6 O'clock in the evening and after coming back to their house, she

slept and no sound was heard at night time. Thus, her statement is also in conflict with the evidence given by her husband that after the threatening by the accused, they went to church at 6 O'clock in the evening whereas the version of the PW. No. 2 is that when he alone came to his house, his mother reported the incident of threat. Thus, there was no occasion for the PW-3 and PW-4 to hear the altercation among the deceased, the accused and the complainant.

25. In the aforesaid facts, it is very difficult to believe the testimony of PWs. No. 3 and 4 that they saw the accused coming out from the house of the deceased with an axe in his hands at 4 O'clock in the morning. Those two witnesses have admitted that at 4 O'clock, it is dark, that it is not possible to recognize a person and at the same time, there is no abnormality in going with an axe at that time for the people of the locality in search of wood in the morning.

26. Although it was vehemently contended by Mr. Raval, the learned Additional Public Prosecutor appearing for the prosecution, that the fact that the accused was absconding for 3 months notwithstanding the fact that he was staying near to the house of the deceased itself is an indication that he committed the offence, we are not at all impressed by such submission. It appears that in the statement of the accused recorded u/s 313 of the Code of Criminal Procedure, no question was put to the accused as regards his alleged absence for three months, and thus, without putting such question to the accused u/s 313 of the Code of Criminal Procedure, the prosecution is not entitled to raise the plea of abscondence.

27. At this stage, we may appropriately refer to the following observations of the Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, as regards the effect of not putting a situation to an accused person at the stage of examination u/s 313 of the Code of Criminal Procedure:

Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court, viz., circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement u/s 313 of the Criminal Procedure Code they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh Vs. State of Madhya Bharat, this Court held that any circumstance in respect of which an accused was not examined u/s 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination u/s 342 or Section 313 of the Criminal Procedure Code, the same cannot be used against him. In Shamu Balu Chaugule Vs. State of Maharashtra, this Court held thus:

The fact that the appellant was said to be absconding, not having been put to him u/s 342, Criminal Procedure Code, could not be used against him.

28. Moreover, we find that the complainant himself made an application before the police authorities wherein the complainant alleged that the accused was very much available in the locality at the locality but the police did not arrest him.

29. We find that in the facts of the present case, the prosecution has failed to prove beyond reasonable doubt that the appellant was guilty of killing his mother-in-law. The incident of the altercation for refund of money, the alleged motive of murder, has even not been proved. In a case which is based on circumstantial evidence, the motive of committing the crime assumes a principal role. Consequently, once the alleged motive sought to be proved is not substantiated by any cogent evidence, the court should be cautious to scrutinize the evidence to ensure that suspicion, emotion or conjecture should not become the substitute of the proof of motive. We further find that as in the past a criminal case of murder was filed against the appellant for killing his wife and the same resulted in acquittal, the complaint against the accused was filed under suspicion or animosity, but the case made out in the complaint was totally conflicting with the evidence given by the witnesses, as pointed out by us above. If the accused had suspected that his money had been stolen, on the selfsame day of giving threat to the complainant and the deceased, he would not have accompanied the complainant to this father-in-law's place to keep the two he-buffaloes purchased by the complainant. Over and above, while considering the motive to murder as alleged by the complainant, the court should be cautious that it could also provide a motive to implicate falsely as pointed out by the Supreme Court in the case of Shamu Balu Chaugule Vs. State of Maharashtra, .

30. In the circumstances, we have no other alternative but to hold that the prosecution failed to prove that the appellant is guilty of murdering the deceased. We also find that the recovery of the weapon and the wearing apparel of the appellant was not proved and even according to the report of the Forensic Science Laboratory, there was no trace of human blood found either in the weapon or on the wearing apparel.

31. We, therefore, set aside the order of conviction and resultant sentence recorded by the learned Sessions Judge. The appellant is acquitted of the offence charged against him in the present case. The appellant is ordered to be released forthwith, if not wanted in any other criminal case.